

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

In re	§	
	§	
PASO DEL NORTE MATERIALS, LLC,	§	Case No. 23-30252-HCM-11
	§	
Debtor.	§	

MOTION FOR PAYMENT OF ATTORNEY'S FEES AND EXPENSES
OUT OF SALE PROCEEDS UNDER 11 U.S.C. § 506(c)

TO THE HONORABLE H. CHRISTOPHER MOTT, UNITED STATES BANKRUPTCY JUDGE:

This pleading requests relief that may be adverse to your interests.

If no timely response is filed within twenty-one (21) days from the date of service, the relief requested herein may be granted without a hearing being held.

A timely response is necessary for a hearing to be held.

Now comes counsel E.P. BUD KIRK for the Debtor PASO DEL NORTE MATERIALS, LLC ("PDNM") and files this Motion for Payment of Attorney's Fees and Expenses out of Sale Proceeds under 11 U.S.C. § 506(c), and would show:

1.

Petition date in this Chapter 11 case is March 15, 2023. Jurisdiction arises under 28 U.S.C. § 1334(a), (b), and (e).

2.

On July 25, 2023 this Court approved PDNM's Motion to Sell four Ranco end-dump 26' trailers, except for the portion of the Motion which requested that attorney's fees and expenses of E.P. BUD KIRK be paid out of the closing. The Court approved the sale but ordered that \$4,500.00 of the sale proceeds be set aside for Mr. KIRK to request approval of, through a Motion under 11 U.S.C. § 506(c).

3.

Code § 506(c) reads as follows:

“(c) The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim, including the payment of all ad valorem property taxes with respect to the property.”

4.

PDNM is a Debtor-in-Possession and has the powers of a bankruptcy trustee under 11 U.S.C. §§ 1106-1107.

5.

Mr. KIRK was contacted by the Debtor on July 10, 2023 and asked to prepare a Motion to Sell four Ranco 26’ end-dump trailers for the purchase price of \$256,000.00. He made notes for the Motion. The following day he received a copy of the purchase offer and incorporated its details into a first draft of the proposed Motion to Sell.

6.

Discussions with the Debtor followed over more details of the sale. A previous motion to sell a single Ranco 26’ end-dump trailer had been approved, but the buyer proposed to pay all of the purchase money directly to the lien holder FIRST SOURCE BANK (“the BANK”), except for the broker’s commission.

7.

Another sale like the first one—all proceeds paid to the BANK--was likely to be burdensome for PDNM. For one thing, it appeared likely that the CITY OF EL PASO would want payment of ad valorem taxes out of the sale. For another, PDNM would have to bear all expenses of the sale. A third problem appeared to be that if the Debtor deposited the purchase price, the buyer might bolt; or the balance in the Debtor’s Debtor-in-Possession account would go over \$250,000, and a second Debtor-in-Possession account would become necessary to comply with FDIC insurance requirements closely watched by the United States Trustee.

8.

One solution appeared readily, and that was that the funding of the purchase could be accomplished through a special, non-Debtor-in-Possession bank account. Debtor's counsel opened such an account with the title "BK Special Assets." Although it took over three hours to open such an account (and obtain the necessary assumed name certificate to go with it), counsel has billed only one hour for that time.

9.

The running bill for the time that counsel has spent on the Motion to Sell is hereto attached.

10.

The Motion required attention to whether there will be sales tax arising upon the sale, and who must pay it. The matter of ad valorem taxes became problematic. Although invited by PDNM to submit a bill for ad valorem taxes on the Ranco trailers, the City of El Paso could find no property identification numbers for them. Counsel for the City of El Paso was hesitant to charge a tax where there had been no assessment.

11.

The Motion had to be expedited because the buyer was impatient. That took additional time.

12.

It also took additional time to make sure the buyer was still interested, to have the hearing, and to draft the order.

13.

Another hour's time will be necessary to close the transaction.

14.

Nothing was billed for the time spent on this § 506(c) Motion.

15.


The expenses for postage and copying for the Motion were \$90.16.

16.

In all the Debtor-in-Possession's expenses (out of pocket and for attorney's fees) came to \$4,080.16. Movant intends that FIRST SOURCE BANK will receive two checks for the sale: an initial amount for \$237,500 and a subsequent check for any residual amount of the \$4,500.00 set-aside that is not either requested or not approved.

WHEREFORE, PREMISES CONSIDERED, Movant prays for the approval of fees and expenses of \$4,080.16 out of the sale.

Respectfully submitted this 24 day of August, 2023.

/s/ 

E.P. BUD KIRK
State Bar No. 11508650
600 Sunland Park Drive
Bldg. Four, Suite 400
El Paso, TX 79912
(915) 584-3773
(915) 581-3452 facsimile
budkirk@aol.com

Attorney for the Debtor-in-Possession

CERTIFICATE OF SERVICE

I do hereby certify that on the 2d day of August, 2023, I did cause a copy of the foregoing Motion for Payment of Attorney's Fees and Expenses of Sale Proceeds Under 11 U.S.C. § 506(c) to be mailed to U.S. Trustee, 615 E. Houston St., Ste. 533, San Antonio, TX 78205-1539; to Paso Del Norte Materials, LLC, 8000 Escobar, El Paso, TX 79907; to Wells Fargo Equipment Finance, Inc., c/o James W. Brewer, P.O. Box 2800, El Paso, TX 79999-2800; to 4Rivers Equipment, LLC, c/o Clyde A. Pine, Jr., P.O. Box Drawer 1977, El Paso, TX 79950-1977; to Texas Comptroller of Public Accounts, c/o Callan C. Searcy, P.O. Box, 12548, Austin, TX 78711-2548; to United States Fire Insurance Company, c/o Gregory M. Weinstein, 8350 Central Expressway, Suite 1550, Dallas Texas 75206; to Sumitomo Mitsui Finance and Leasing Co., Ltd., c/o Matthew F. Kye, Esq., 201 Old Country Road, Ste. 120, Melville, NY 11747; to City of El Paso, c/o Don Stecker, 112 E. Pecan Street, Suite 2200, San Antonio, TX 78205; to Christopher V. Arisco, 420 Throckmorton Street, Suite 1210, Fort Worth, Texas 76102; to 1st Source Bank, c/o Jarom J. Yates, 2323 Victory Avenue, Suite 700, Dallas, TX 75219; to Prana Machinery, Inc., c/o Aldo R. Lopez 5822 Cromo Dr., El Paso, TX 79912; to C&R Distributing, LLC, c/o Michael J. Shane, 4695 N. Mesa Street, Suite 100, El Paso Texas 79912; to Clowe & Cowan of El Paso, LLC, c/o Michael J. Shane, 4695 N. Mesa Street, Suite 100, El Paso Texas 79912; to Joshua Ortega d/b/a Sunset Sand & Gravel, c/o James M. Feuille, One San Jacinto Plaza, 201 E. Main Dr., suite 1100, El Paso, Texas 79901; to Sumitomo Mitsui Finance and Leasing Company, Ltd., c/o James W. King, 6420 Wellington Place, Beaumont, TX 77706; to Internal Revenue Service, c/o Steven Bass, 903 San Jacinto Blvd., Suite 334, Austin, TX 78701; to Joe A. Rosales, Jr., c/o Weycer, Kaplan, Pulaski & Zuber, P.C., 24 Greenway Plaza, Ste. 2050, Houston, TX 77046; to Wallwork Financial, c/o Kelsey N. Linendoll, 420 Throckmorton Street, Suite 1210, Forth Worth, Texas 76102; and to 20 Largest Unsecured Creditors as shown on the attached list; and via email to Craig Brown, restructuringexperts@gmail.com.

/s/ 
E.P. BUD KIRK

4988-MC-072723

20 Largest Unsecured Creditors

American Express
Customer Care & Billing
P.O. Box 981535
El Paso TX 79998

BioDyna
P.O. Box 955967
Saint Louis, MO 63195-5967

Border International Truck-EP
12283 Rojas
El Paso TX 79936

Brewer Oil Co.
1025 Wall St.
El Paso, TX 79915

C&R Distributing, LLC
140 S. Prado
El Paso, TX 79907

Century Rentals
955 Loma Verde Rd.
El Paso TX 79936

Dump Truck & Loader Service, Inc.
1645 Bessemer
El Paso, TX 79936

Environmental & Safety Solutions
6044 Gateway Blvd., E, Ste. 303
El Paso, TX 79905

Fuels, LLC
P.O. Box 150990
Ogden, UT 84415

Long Horn Electrical Services, Inc.
2227 Texas Ave.
El Paso TX 79901

Office of the Attorney General
Environmental Protection Division
P.O. Box 12548 MC-066
Austin TX 78711-2548

Prana Machinery
11640 Gateway East Blvd.
El Paso TX 79927

Purvis Industries
P.O. Box 540757
Dallas TX 75354

Reliable Asphalt Products
P.O. Box 519
Shelbyville KY 40066

Sapphire Gas Solutions, LLC
Lockbox/P.O. Box 679262
Dallas TX 75267-9262

Terracon
6460 Hiller St., Ste. A
El Paso TX 79925

Wagner Equipment Co.
P.O. Box 919000
Denver CO 80291-9000

Western Explosives Systems Co.
6875 South 900 East
Midvale UT 84047

E.P. BUD KIRK

Attorney at Law

Terrace Gardens
600 Sunland Park Dr.
Building Four, Suite 400
El Paso, TX 79912

Telephone (915) 584-3773
Facsimile (915) 581-3452
E-mail budkirk@aol.com

Paso Del Norte Materials, LLC
8000 Escobar
El Paso, TX 79907

			<u>Amount</u>
July 10, 2023	Discuss buyer interest in Ranco trailers with Mr. Rosales.	0.30	\$90.00
July 11, 2023	Review buyer's inquiry (.3); call Jo Ann regarding same (.2); review the written offer (.4); draft special paragraphs for a motion to sell regarding inspection passing and sales tax (.3); discuss with Jo Ann who can close the transaction (.5).	1.70	\$510.00
July 14, 2023	Work on Motion to Sell 4 Ranco end-dump trailers (2.5); go to Weststar Bank to open a "special assets" account (1.0); call Jo Ann regarding wiring instructions (.2); leave message for Don Stecker regarding amount owed in property tax on the Four Ranco trailers (.2).	3.90	\$1,170.00
July 17, 2023	Revise the Motion to Sell the Rancos.	1.20	\$360.00
July 19, 2023	Revise the Motion to Sell the Rancos, with ad valorem tax paid.	1.30	\$390.00
June 20, 2023	Draft Motion and Order for Expedited hearing (.6); make sure Motions and Orders are filed (.2); verify buyer funds (.2); confer again with Don Stecker. He is reluctant to collect where there has been no assessment (.3).	1.30	\$390.00
June 21, 2023	Read Order, give Notice of Expedited Hearing.	0.40	\$120.00
June 24, 2023	Leave calls for Jarom Yates regarding amount of attorney's fees on the Ranco sales.	0.30	\$90.00
June 25, 2023	Research for enabling law on deduction of debtor-in-possession's attorney fees and expenses as an expense of sale (.5); attend the hearing on the Motion to Sell (.6); draft the Order approving the	1.60	\$480.00

	sale (.5).		
June 27, 2023	Revise the Order (.3).	0.30	\$90.00
August 1, 2023	Estimated time to close the transaction, cut the lien holder's check, and send the order to the parties.	1.0	\$300.00
	Postage and copying.		<u>90.16</u>
	Total amount of this Bill		\$4,080.16